

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GABRIEL MATTHEW GUILLEN,

Plaintiff,

v.

TYLER SCHLEICHER, et al.,

Defendants.

Case No. 1:23-cv-01722-KES-SAB

ORDER VACATING FINDINGS AND
RECOMMENDATIONS AND GRANTING
PLAINTIFF THIRTY DAYS TO FILE AN
AMENDED COMPLAINT

(ECF Nos. 19, 20)

Gabriel Matthew Guillen (Plaintiff), proceeding *pro se* and *in forma pauperis*, filed the first amended complaint in this civil rights action pursuant to 42 U.S.C. § 1983 against Bakersfield Police Department Officers Tyler Schleicher, Edgar Galdamez, and Jaime Orozco (collectively, “Defendant Officers”). On September 9, 2024, a screening order issued finding Plaintiff had failed to state a cognizable claim and granting Plaintiff leave to file a second amended complaint within thirty days. (ECF No. 17.) In the September 9, 2024 order, Plaintiff was advised that if he failed to file an amended complaint, it would be recommended that this action be dismissed for the reasons stated in the order. (*Id.* at 6.) More than thirty days passed, and Plaintiff did not file an amended complaint or otherwise respond to the screening order. Accordingly, Findings and Recommendations to dismiss the action for failure to state a cognizable claim, failure to prosecute, and failure to obey the Court’s order to file an amended complaint were issued on October 16, 2024. (ECF No. 16.) The Findings and Recommendations were served on Plaintiff and contained notice that objections were due within fourteen days. (*Id.*)

1 On October 28, 2024, Plaintiff filed objections to the Findings and Recommendations. (ECF
2 No. 20.) In his objections, Plaintiff submits that he did not receive the Court's September 9, 2024
3 order. Plaintiff requests a complaint form and time to file a second amended complaint.

4 In light of the fact that Plaintiff has now responded to the Findings and Recommendations and
5 expressed his intent to litigate this action, the Court will vacate the Findings and Recommendations
6 recommending dismissal of the action for failure to state a cognizable claim, failure to prosecute, and
7 failure to obey the Court's order to file an amended complaint. The Court will grant Plaintiff
8 additional time to file a second amended complaint.

9 Based on the foregoing, it is HEREBY ORDERED that:

- 10 1. The Findings and Recommendations issued on October 16, 2024 (ECF No. 19), are
11 VACATED;
- 12 2. The Clerk of Court is directed to forward Plaintiff a courtesy copy of the Court's
13 September 9, 2024 screening order (ECF No. 17), which includes an amended civil
14 rights complaint form;
- 15 3. Plaintiff is granted thirty (30) days from the date of service of this order to file a second
16 amended complaint; and
- 17 4. Failure to comply with this order will result in a recommendation to dismiss the action
18 for failure to prosecute and failure to comply with a court order.

19 IT IS SO ORDERED.

20 Dated: October 29, 2024

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22 UNITED STATES MAGISTRATE JUDGE
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